

1 **TIFFANY & BOSCO**
2 P.A.

2525 EAST CAMELBACK ROAD
SUITE 300
PHOENIX, ARIZONA 85016
TELEPHONE: (602) 255-6000
FACSIMILE: (602) 255-0192

5 Mark S. Bosco
6 State Bar No. 010167
7 Leonard J. McDonald
8 State Bar No. 014228
Attorneys for Movant

8 09-18760

9 **IN THE UNITED STATES BANKRUPTCY COURT**
10 **FOR THE DISTRICT OF ARIZONA**

12 IN RE:

No. 2:09-bk-15380-SSC

13 Waunita R. Weingart and Alois Craig
14 Weingart

Chapter 7

15 Debtors.

Adversary Proceeding
Case No.: 2:09-ap-01292

16 Wells Fargo Bank, N.A.

ADVERSARY COMPLAINT TO
DETERMINE DISCHARGEABILITY OF
DEBTS PURSUANT TO 11 U.S.C. §523
AND §727, AND OBJECTIONS
TO DISCHARGE

17 Movant,

vs.

18 Waunita R. Weingart and Alois Craig
19 Weingart, Debtors; Roger W. Brown, Trustee.

20 Respondents.

21 Plaintiff, Wells Fargo Bank, N.A. (hereinafter "Wells Fargo"), by and through its counsel,
22 Tiffany & Bosco, P.A., for causes of action against the Defendants named above, alleges and
23 complains as follows:

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25

26

THE PARTIES AND JURISDICTION

1. Plaintiff seeks to determine the dischargeability of certain debts pursuant to Bankruptcy Rules 4007 and 7001(6), and bring this adversary proceeding pursuant to 11 U.S.C. § 523(a)(2) and (4), 11 U.S.C. § 727(a)(4), and 11 U.S.C. § 105(a).

2. Waunita R. Weingart and Alois Craig Weingart (hereinafter collectively "Defendants") filed a petition for relief under Chapter 7 of the Bankruptcy Code on July 2, 2009.

3. The question of Defendants' discharge has not as of this date been determined.

4. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334 and § 157(b).

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

6. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) and (J).

FACTUAL ALLEGATIONS-SAXEBOROUGH PROPERTY

7. The parcel of real property at issue in this adversary proceeding is commonly known as 7766 Saxeborough Drive, Castle Rock, CO 80104 (hereinafter "the Saxeborough Property"), which is legally described as follows:

LOT 21, CHARTER OAKS, COUNTY OF DOUGLAS, STATE OF COLORADO.

8. Defendants obtained title to the Saxeborough Property via a Warranty Deed recorded on September 18, 1997 at Reception No. 9752193 in the office of the Clerk and Recorder of Douglas County, Colorado.

9. Wells Fargo claims an interest in the Saxeborough Property by virtue of a Promissory Note and Deed of Trust dated October 18, 2005, in the original amount of \$412,500.00. Wells Fargo holds the beneficial interest under this Deed of Trust.

10. Upon information and belief, Defendants acting through title agencies owned and/or controlled by Defendant Waunita Weingart closed at least eighteen loans allegedly secured by the Saxeborough Property from 1999 through 2008 in excess of \$6.7 million. Upon

1 information and belief, these title agencies include Colorado County & Community Title, LLC
2 and Real Estate Title, LLC.

3 11. Upon information and belief, the title agencies owned and/or controlled by
4 Defendant Waunita Weingart did not use the loan proceeds to satisfy prior encumbrances upon
5 the Saxeborough Property. Rather, upon information and belief, the loan proceeds were either
6 converted or were used at least in part to debt service the numerous loans on the Saxeborough
7 Property for some period of time.

8 12. Upon information and belief, the title agencies owned and/or controlled by
9 Defendant Waunita Weingart either did not record or did not timely record the multiple deeds of
10 trust on the Saxeborough Property. Many of said deeds of trust were recorded years after the
11 date of execution or were not recorded at all.

12 13. Upon information and belief, the title agencies owned and/or controlled by
13 Defendant Waunita Weingart did not disclose the existence of the untimely recorded or
14 unrecorded deeds of trust to Wells Fargo, or any of the other lenders with a purported interest in
15 the Saxeborough Property.

16 14. On February 25, 2009, Wells Fargo Bank, N.A., as Trustee of the Security
17 National Mortgage Loan Trust 2005-2, caused a foreclosure sale of the Property to be
18 conducted pursuant to a deed of trust dated October 12, 2000 and recorded on April 22, 2002 at
19 Reception No. 02038658 in the office of the Clerk and Recorder of Douglas County, Colorado.
20 This foreclosure sale extinguished the Deed of Trust of Wells Fargo on the Saxeborough
21 Property.

22 15. Upon information and belief, due to the pattern of fraud committed over the last
23 ten years by Defendants and their title agents, multiple deeds of trust, both recorded and
24 unrecorded, were executed purportedly securing in excess of \$6.7 million of loans payable to
25 numerous lenders on the Saxeborough Property. Upon information and belief, nearly all of
26 these deeds of trust were intended by the lenders to represent first position liens on the

1 Saxeborough Property, which was valued at \$431,303.00 according to the most recent valuation
2 of the Douglas County Assessor's Office.

3 **FIRST CAUSE OF ACTION**

4 16. Based upon the facts set forth herein, Defendants' debt on the Wells Fargo Loan
5 is non-dischargeable pursuant to 11 U.S.C. § 523(a)(2) and (4), and 11 U.S.C. § 727(a)(4).

6 17. Pursuant to the terms of the subject Promissory Note and Deed of Trust for the
7 Wells Fargo Loan, Wells Fargo is entitled to an award of attorneys' fees and costs incurred
8 herein.

9 **PRAAYER**

10 WHEREFORE, Plaintiff prays for judgment on all causes of action set forth herein as
11 follows:

12 1. For an order determining that Defendants' respective debts referenced herein are
13 nondischargeable pursuant to 11 U.S.C. § 523(a)(2) and (4);

14 2. For an order denying the entire discharge of Defendants pursuant to 11 U.S.C.
15 § 727(a)(4);

16 3. For an award of attorneys' fees incurred herein;

17 4. For costs of court;

18 5. For any and all additional relief deemed appropriate by this Honorable Court.

19 DATED this 5th day of October, 2009.

20 Respectfully submitted,

21 TIFFANY & BOSCO, P.A.

22 BY /s/ LJM # 014228

23 Mark S. Bosco
24 Leonard J. McDonald
25 Attorney for Movant

1 Copy of the foregoing
2 Mailed on October 6, 2009, to:

3 Waunita R. Weingart and Alois Craig Weingart
4 20606 N. Tammy St.
5 Maricopa, AZ 85238
6 Debtors

7 Leonard V. Sominsky
8 3839 N. 3rd Street
9 Suite 205
10 Phoenix, AZ 85012
11 Attorney for Debtors

12 Roger W. Brown
13 P.O. Box 32967
14 Phoenix, AZ 85064-2967
15 Trustee

16 Arizona Department of Revenue
17 P.O. Box 52016
18 Phoenix, AZ 85072-2016

19 Colorado State Department of Revenue
20 1375 Sherman St. Rm #409
21 Denver, CO 80261

22 Internal Revenue Service (7)
23 Spec Proc MS# 5082PX
24 210 East Earll Dr BK Disc
25 Phoenix, AZ 85012-9863

26 U.S. Trustee
27 230 North 1st Avenue, Suite 204
28 Phoenix, AZ 85003-1706

29 By: /s/ Paula D. Hillock